

**STATE OF SOUTH CAROLINA**  
**BEFORE THE PUBLIC SERVICE COMMISSION**  
**DOCKET NOS. 2017-207-E, 2017-305-E, AND 2017-370-E**

IN RE: )  
 )  
 Friends of the Earth and Sierra Club, )  
     Complainants/Petitioners )  
     v. )  
 South Carolina Electric & Gas Company, )  
     Defendant/Respondent )

**SOUTH CAROLINA ENERGY**  
**USERS COMMITTEE'S**  
**POST-HEARING BRIEF**

IN RE: )  
 Request of the Office of Regulatory Staff )  
 for Rate Relief to South Carolina Electric )  
 & Gas Company's Rates Pursuant to S.C. )  
 Code Ann. §58-27-920 )

IN RE: )  
 )  
 Joint Application and Petition of South )  
 Carolina Electric & Gas Company and )  
 Dominion Energy, Inc. for review and )  
 approval of a proposed business )  
 combination between SCANA )  
 Corporation and Dominion Energy, Inc., )  
 as may be required and for prudence )  
 determination regarding the abandonment )  
 of the V.C. Summer Units 2 & 3 Project )  
 and associated merger benefits and cost )  
 recovery plan. )

***Insanity: doing the same thing over and over again and expecting different results.***

Attributed to Albert Einstein, noted physicist responsible for the world's most famous formula  $E = mc^2$  explaining the process of nuclear fission.

The South Carolina Energy Users Committee ("SCEUC") respectfully requests that the South Carolina Public Service Commission ("Commission") deny South Carolina Electric and Gas Company ("SCE&G") relief under the Base Load Review Act ("BLRA") after July 31, 2017, the date SCE&G abandoned construction of the two nuclear plants in Jenkinsville, South Carolina. For the reasons set out, the Commission should enter its order denying SCE&G recovery of annual revenues of \$445 million representing the revised rate increased authorized under the BLRA and deny SCE&G recovery of any revised rates revenues and capital costs expended after July 31, 2017.

### **Material Facts**

Having ceased construction of the nuclear plants by July 31, 2017, SCE&G was no longer in compliance with the BLRA. Order No. 2016-794, issued November 28, 2016, approved a budget for the nuclear plants of \$7.7 billion and completion dates for the plants of August 31, 2019 and August 31, 2020. On August 1, 2017, Kevin B. Marsh, Stephen A. Byrne and Jimmy E. Addison presented an allowable ex parte briefing and informed the Commission that SCE&G had abandoned construction of both plants as of July 31, 2017 and that SCE&G officials concluded that the plants could not be completed before December 31, 2022 and March 31, 2024 and at a cost of \$2.2 billion greater than the cost authorized under Order No. 2016-794 (August 1, 2017 allowable ex parte briefing Tr. at pp. 7, 14, 15). In addition, SCE&G filed an application with the Commission August 1, 2017 in Docket No. 2017-244-E seeking a prudence determination of the abandonment of construction of the plants pursuant to S.C.

Code Ann. Section 58-33-280(K). In its petition, SCE&G conceded that the forecasted costs to complete the nuclear plants would be \$2.2 billion more than the costs approved in Order No. 2016-794. Further, SCE&G confirmed that the forecasted completion dates were December 31, 2022 and March 31, 2024. (SCE&G Petition, pp. 6-7).<sup>1</sup> As of July 31, 2017 SCE&G was no longer in compliance with Order No. 2016-794.

### **The Base Load Review Act**

The Base Load Review Act (“BLRA”) provides that, as long as a nuclear plant is constructed in accordance with the approved schedules, estimates and projections, as adjusted by the inflation indices, a utility must be allowed to recover its capital costs related to plant through revised rate filings or general rate proceedings. S.C. Code Ann. §58-33-275(C). The purpose of the BLRA,

is to provide for the recovery of the prudently incurred costs associated with new base load plants, as defined in Section 58-33-220 of Article 4, when constructed by investor-owned electrical utilities, while at the same time protecting customers of investor-owned electrical utilities from responsibility for imprudent financial obligations or costs.  
Base Load Review Act Section 1(A).

See *South Carolina Energy Users Committee v. The South Carolina Public Service Commission*, 388 S.C. 495, 697 S.E.2d 592 (2010).

A base load review order issued pursuant to the BLRA,

means an order issued by the commission pursuant to Section 58-33-270 establishing that if a plant is constructed in accordance with an approved construction schedule, approved capital costs estimates, and approved projections of in-service expenses, as defined herein, the plant is considered to be used and useful for utility purposes such that its capital costs are prudent

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<sup>1</sup> The application in Docket No. 2017-244-E was subsequently withdrawn.

utility costs and are properly included in rates. S.C. Code Ann. Section 58-33-220(4).

The benefits available under the BLRA are conditioned upon the utility constructing the plant on schedule and on budget. The BLRA provides that,

(A) A base load review order shall constitute a final and binding determination that a plant is used and useful for utility purposes, and that its capital costs are prudent utility costs and expenses and are properly included in rates so long as the plant is constructed or is being constructed within the parameters of:

- (1) the approved construction schedule including contingencies; and
  - (2) the approved capital costs estimates including specified contingencies.
- S.C. Code Ann. Section 58-33-275(A)

As long as a nuclear plant is constructed in accordance with the approved schedules, estimates and projections, as adjusted by the inflation indices, a utility must be allowed to recover its capital costs related to the plant through revised rate filings or general rate proceedings. S. C. Code Ann. § 58-33-275(C).

The traditional concept of rate making in South Carolina is based on historical data with adjustments permitted for known and measurable out of period changes. *Hamm v. Southern Bell Telephone & Telegraph Company*, 302 S.C. 132, 394 S.E. 2<sup>nd</sup> 311 (1990); *South Carolina Cable Television Association v. The Public Service Commission of South Carolina*, 313 S.C. 48, 437 S.E. 2<sup>nd</sup> 38 (1993). The BLRA breaks from traditional concepts of ratemaking by allowing a utility advanced cost recovery of certain of its capital costs of constructing nuclear plants based upon anticipated capital costs to be expended many years into the future, long before they are used and useful for generating electricity. Equally important, the BLRA provides a utility an upfront determination of the prudence of the utility's decision to build the plants, a determination which may not thereafter be challenged.

Pursuant to S. C. Code Ann. §§ 58-33-270(A), the Commission shall issue a base load review order approving rate recovery for capital costs if it determines that “the utility’s decision to proceed with construction of the plant is prudent and reasonable considering the information available to the utility at the time.” *South Carolina Energy Users Committee v. South Carolina Electric and Gas*, 410 S.C. 348 , 764 S.E3d. 913 (2014). The BLRA provides that a utility can modify its schedules, estimates and projections. S. C. Code Ann. §§ 58-33-270(E) provides,

(E) As circumstances warrant, the utility may petition the commission, with notice to the Office of Regulatory Staff, for an order modifying any of the schedules, estimates, findings, class allocation factors, rate designs, or conditions that form part of any base load review order issued under this section. The commission shall grant the relief requested if, after a hearing, the commission finds:

- (1) as to the changes in the schedules, estimates, findings, or conditions, that the evidence of record justifies a finding that the changes are not the result of imprudence on the part of the utility; and
- (2) as to the changes in the class allocation factors or rate designs, that the evidence of record indicates the proposed class allocation factors or rate designs are just and reasonable.

Consequently, the Commission shall issue an order amending the BLRA Order pursuant to S. C. Code Ann. §§ 58-33-270(E) if the utility’s decision to modify its capital cost and construction schedules is prudent and reasonable considering the information available at the time.

SCE&G sought and was granted relief under S.C. Code § 58-33-270(E) on five occasions. See Order No. 2010-12; Order No. 2011-345; Order No. 2012-884; Order No. 2015-661; and Order No. 2016-794. The Commissions application of S.C. Code § 58-33-270(E) was affirmed by the Supreme Court. *South Carolina Energy Users Committee v. South Carolina Electric & Gas Company*, 410 S.C. 348; 764 S.E.2d 913 (2014). SCE&G

sought and was awarded revised rate increases on nine occasions: Order No. 2009-104(A); Order No. 2009-696; Order No. 2010-625; Order No. 2011-738; Order No. 2012-761; Order No. 2013-680(A); Order No. 2014-785; Order No. 2015-712; and Order No. 2016-758.

The BLRA provides for the recovery of certain capital costs where a plant is abandoned after a base load review order approving rate recovery has been issued. The BLRA provides for,

...recovery of capital costs and the utility's cost of capital associated with them may be disallowed only to the extent that the failure by the utility to anticipate or avoid the allegedly imprudent costs, or to minimize the magnitude of the costs, was imprudent considering the information available at the time that the utility could have acted to avoid or minimize the costs.  
S. C. Code Ann. § 58-33-280(K)

The determination of prudence required by S. C. Code Ann. §§ 58-33-270(A) and (E), is made at the time of the utility's decision to proceed with the construction of the plant or its decision to petition for modifications of the construction schedules. However, the determination of prudence required by S. C. Code Ann. § 58-33-280(K) examines the utility's conduct at the time it acts to expend costs to construct the plant. The BLRA requires the utility to protect its ratepayers from imprudent financial obligations or costs, and prudence requires the utility to act to anticipate, avoid or minimize costs even though those costs may have been authorized under its base load review order or pursuant to S.C. Code Ann. Section 58-33-270(E).

The concept of prudence implies a standard or duty of care owed to others. While the standard to be applied is reasonableness under the circumstances, where the risk of harm to the ratepayer is greater, the standard of care expected from the utility is higher.

*Georgia Power Co. v. Georgia Public Service Comm'n*, 196 Ga. App. 572, 396 S.E.2d 562 (1990). While the meaning of the term “prudence” as applied to the BLRA was derived from traditional concepts of rate making, the General Assembly has codified the meaning of the term “prudence.” See S.C. Code § 58-33-220, as amended.

### Argument

SCE&G elected to build its nuclear plants under the BLRA. SCE&G’s failure to comply with the BLRA prohibits it from recovering approximately \$445 million annually in revised rates revenue and any nuclear construction costs or abandonment costs under the BLRA after July 31, 2017.

Recovery of rates through revised rates is a statutory benefit to which SCE&G is entitled only so long as it is compliance with the schedule, estimates and projections in its BLRA Order. S.C. Code Ann. 58-33-275(C). The nuclear units are no longer being constructed. Consequently, SCE&G is no longer entitled to recovery of the revenues generated by the revised rates or recovery of capital costs of the abandoned units. *South Carolina Electric and Gas Company, v. Randall, et al.* C.A. No.:3:18-cv-01795-JMC Order at p. 20 -23. The Federal District Court’s analysis reflected that for the purposes of recovery under the BLRA, three different rate periods are at issue.

The court understands there to be three different rate periods at issue. This first period is the time during which SCE&G was either constructing or otherwise abandoning the Project and charging ratepayers the revised rates approved by the nine base load review orders of the PSC. The second rate period is the time during which SCE&G was no longer constructing the Project but continued to charge the revised rates. The third time period will be governed by the outcome of the abandonment proceeding currently ongoing before the PSC, as the PSC must determine when SCE&G was

either no longer constructing the Project or otherwise abandoning the Project and whether SCE&G decision to abandon was prudent, entitling SCE&G to continue to recover the capital costs of the Project. *See* S.C. Code Ann. § 58-33-280(K).

The Federal Court concluded that during the second and third periods, the “so long as the plan is constructed or being constructed” language ceases to constrain the discretion of the Commission. Order at pp. 22 – 23.<sup>2</sup> To recover revised rates or abandonment costs under the BLRA, SCE&G must be constructing the plants at the time the Company files for recovery under the BLRA. It is undisputed that SCE&G had ceased construction seventeen months prior to filing for rate relief in this docket. Having ceased construction prior to its request for abandonment costs, the Company no longer satisfies the provisions of S.C. Code Ann. § 58-33-275(A) and is prohibited from recovering the revised rates revenues and abandonment costs under the provisions of the BLRA.<sup>3</sup>

Moreover, the Federal District Court’s decision is supported by South Carolina decisional law. It is settled law that for a party to recover the benefits afforded it under a statute, that the party must otherwise be in compliance with the other provision of that statute. SCE&G has ceased construction of the units and is no longer in compliance with Order No. 2016-794. Yet, SCE&G has accepted recovery of \$2 billion in revised rates and has benefited from the upfront determination of its decision to build the units. Having

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<sup>2</sup> SCEUC does not seek to “claw back” those revenues paid SCE&G during the first period during which the utility was constructing the plants and charging ratepayers the revised rates approved by the nine base load review orders of the PSC.

<sup>3</sup> To this effect, see the Pre-Hearing Brief of the Speaker of the House James H. “Jay” Lucas dated October 26, 2018 at page 5 arguing against SCE&G’s entitlement to revised rates after July 31, 2017.



elected to construct and finance its nuclear plants pursuant to the BLRA, having accepted the benefits provided by the BLRA, and having failed to comply with the BLRA, SCE&G is precluded as a matter of law from the continued recovery of revised rates revenue and capital costs for the abandoned nuclear plants under the BLRA. *Southern Soya Corp. of Cameron v. Wasson*, 252 S.C. 484, 167 S.E.2d 311 (1969); *Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. 253, 626 S.E.2d 6 (2005).

The South Carolina Attorney General has opined that the BLRA as applied is unconstitutional because it violated the procedural and substantive constitutional rights of SCE&G's ratepayers.<sup>4</sup> As a consequence, SCE&G is barred from recovery of revised rates and abandonment costs. This Commission has the authority to determine that the BLRA has been unconstitutionally applied in violation of the South Carolina Constitution. *Travelscape, LLC v. South Carolina Department of Revenue*, 391 S.C. 89, 705 S.E.2d 28 (2011); *Ward v. State*, 343 S.C. 14, 538 S.E.2d 245 (2000). For these reasons, the Commission should determine that the BLRA was applied unconstitutionally and bar SCE&G from recovery of revised rates after abandonment of construction July 31, 2017 as well as recovery of abandonment costs.

While SCE&G's delay in filing for recovery of abandonment costs pursuant to S. C. Code Ann. § 58-33-280(K) is fatal to its application for recovery of its abandonment costs, the record demonstrates that SCE&G officials understood the importance of remaining in

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<sup>4</sup> SC Attorney General's opinion dated September 26, 2017.

compliance with its base load review order, as well as the risks of violating the order. Kevin Marsh, SCE&G's CEO testified in Docket No. 2015-103-E that,

“[i]f SCE&G foregoes adjusting its cost and construction schedules, it foregoes including these costs in revised rates filings. Without revised rates, SCE&G loses revenue that is required to support the debt the company plans to issue in coming years and to support common stock.” (Jones Prefiled Direct, p. 14, ll. 11 – 15; Tr. p. )

Mr. Addison agreed with Mr. Marsh testifying that the BLRA required the utility to petition the Commission pursuant to S.C. Code Ann. Section 58-33-270(E) to amend the construction schedule if construction delays develop (Tr. p. 1632, ll. 13 – 25).

SCE&G officials had advance notice that Westinghouse planned to file bankruptcy and could have applied to recover its abandonment costs while it remained in compliance with Order No. 2016-794. Westinghouse notified both SCE&G and Santee Cooper of its impending bankruptcy allowing these companies to negotiate an interim assessment agreement (“IAA”) with Westinghouse allowing construction work on the plants to continue with SCE&G and Santee Cooper evaluated their options with respect to completion of the plants. The IAA went into effect immediately upon the bankruptcy filing. (Kochems Prefiled Direct, p. 47, ll. 3-13; Tr. p. ). Pursuant to the IAA, SCE&G paid Westinghouse approximately \$400 million between the bankruptcy filing and SCE&G's decision to abandon construction of the plants, by which time SCE&G was in violation of Order No. 2016-794 (Tr. p. 4045, l. 14 – p. 4047, l. 25). Knowing that the BLRA required the utility to petition the Commission to amend its cost and construction schedules, SCE&G officials made a deliberate decision to delay abandoning the project hoping that circumstances would permit the completion of the plants. SCE&G's decision to delay filing to amend its

schedules is fatal to its recovery of revised rates after July 31, 2017 as well as recovery of abandonment costs.<sup>5</sup>

SCE&G protests that if it is forced to comply with State law and is denied recovery of revised rates revenue and abandonment costs, its cost of borrowing will rise. To the contrary, Kevin W. O'Donnell, CFA, testified that SCE&G has sufficient revenues and financial depth to absorb the loss of the revised rates revenue and the failure to recover abandonment costs. Mr. O'Donnell testified that, SCANA's decision to cut its dividend by 80% amounts to a savings to SCANA of approximately \$279 million. (O'Donnell Prefiled Direct Testimony, page 6, lines 1 – 17). Mr. O'Donnell testified further that SCANA may cut or eliminate its dividend to secure its credit rating saving SCANA as much as \$70 million per year. (O'Donnell Prefiled Direct Testimony, page 9, line 24 – page 10, line 2).

In addition, Mr. O'Donnell testified that the cost of an SCE&G downgrade will not materially impact the utility or its ratepayers. He testified that “the cost of an SCE&G downgrade will cost consumers approximately \$110 million over the next 30 years, meaning that the average cost of the downgrade is roughly \$3.67 million per year. The rate cut proposed by the ORS is \$445 million per year for 30 years. Clearly, the higher cost of debt should not be a determinative factor in assessing the ORS petition for rate reduction.” (O'Donnell Prefiled Direct Testimony page 12, lines 9 – 14).

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<sup>5</sup> See also S.C. Code Ann. § 58-33-220, as amended, which precludes recovery of the abandonment costs.

SCANA has other opportunities to shore up its finances for the benefit of its ratepayers. Mr. O'Donnell testified that SCANA may sell its North Carolina subsidiary, PSNC for an amount sufficient to pay most if not all of its capital costs for which it is seeking recovery from its South Carolina ratepayers in this docket. (O'Donnell Prefiled Direct testimony page 8, line 1 – page 9, line 2).

No SCE&G witness testified that reducing revenue as recommended by Mr. O'Donnell and other witness will result in a SCE&G bankruptcy. Moreover, Mr. O'Donnell and other witnesses testified that the impact on borrowing costs resulting from reducing rates will be manageable for the utility.

SCE&G has recovered approximately \$120 million in revised rates since July 31, 2017 and prior to the imposition of temporary rates was recovering approximately \$445 million annually in rates associated with nine revised rates increases. Based on the foregoing, the Commission should order that SCE&G's rates be reduced by an amount sufficient to recover the \$120 million collected since July 31, 2017 and eliminate the revised rates revenues. In addition, SCE&G seeks recovery of as much as \$3.3 billion in abandonment costs in rates. SCE&G has failed to timely seek recovery of abandonment costs and should be denied recovery of these costs.

#### Act 258

In the alternative, should the Commission determine that the public interest requires it to authorize SCE&G recovery of nuclear construction costs, the Commission should only authorize recovery of nuclear construction costs as of September 30, 2011.

By Act 258 (H. 4375), the South Carolina General Assembly acted to reduce rates temporarily by 15%. Act 258 reduced SCE&G's rates by eliminating all revised rates authorized in Order No. 2011-738, Order No. 2012-761, Order No. 2013-689(A), Order No. 2014-785, Order No. 2015-712 and Order No. 2016-758. In enacting Act 258, the General Assembly determined that recovery of nuclear construction costs after September 30, 2011 was not in the public interest.<sup>6</sup> According to the record, SCE&G had incurred approximately \$1.2 billion in nuclear construction costs as of that date.<sup>7</sup>

The record supports the General Assembly's determination to reduce rates to exclude revised rates revenue after September 30, 2011. The record reflects that Westinghouse was never able to provide SCE&G a reliable site specific construction schedule. Yet, year after year, SCE&G represented to this Commission that the Westinghouse schedules, as revised over and over again, were credible and reliable.

In its testimony in the BLRA application in Docket No. 2008-196-E, SCE&G disavowed Westinghouse's proposed schedule because it was not site specific. Subsequently, SCE&G was forced to file a petition pursuant to the S.C. Code Ann. Section 58-33-270(E) seeking to amend the schedule so as to provide a credible and reliable construction schedule. By Order No. 2010-12, the Commission approved the modification of the construction schedule. In so doing, the Commission characterized the schedule contained in the EPC Contract approved by Order No. 2009-104(A) as a

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<sup>6</sup> Order No. 2011-738 was issued September 30, 2011 and raised rates effective for bills rendered on and after October 30, 2011.

<sup>7</sup> According to its December 2011 quarterly report, SCE&G had spent approximately \$1.210 billion as of December 31, 2011. According to its December 2010 quarterly report, SCE&G had spent approximately \$399 million as of December 31, 2010.

generic schedule for the construction of the two Westinghouse AP1000 units. Order No. 2010-12 at p. 5. The Commission further stated that Westinghouse had left itself substantial work to do to provide a reliable, fully integrated construction schedule. Order No. 2010-12 at pp. 5-6. However, the Westinghouse schedule never proved to be reliable.

The schedule approved in Order No. 2010-12 required Westinghouse to successfully obtain the Combined Operating License ("COL") by mid-2011. Certain nuclear construction could not commence until the COL was issued by the Nuclear Regulatory Commission ("NRC") and any delay could prevent SCE&G to meet its construction schedule approved in Order No. 2010-12. Westinghouse failed to obtain the COL by mid- 2011 and Westinghouse's failure to meet its schedule delayed the full notice to proceed until April 2012 (Order No. 2012-844 at p. 36). The Commission expressly found in Order No. 2012-844 that the delay in the issuance of the COL was the principal cause of the nine-month delay of this critical path item (Order No. 2012-844 at p. 73). SCE&G knew as early as December 2010 that the COL would not be timely issued and that as a consequence, substantial completion of one of the units would be delayed (Quarterly Report 12/10 at pp. 6-7). In fact, Attorney George Wenick was hired by SCE&G in 2011 to assist SCE&G to negotiate the cost overruns and schedule delays giving rise to Docket No. 2012-203-E (Tr. p. 2725, l. 25 – p. 2727, l. 1). SCE&G knew or should have known by September 30, 2011 that Westinghouse was incapable of creating a credible, reliable construction schedule and

yet, SCE&G failed to abandon construction to protect ratepayers from imprudent financial costs or obligations.

A cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *South Carolina Energy Users Committee v. The South Carolina Public Service Commission*, 388 S.C. 495, 697 S.E.2d 592 (2010). In enacting Act 258, the General Assembly acted to protect the public interest by protecting SCE&G's ratepayers from any and all imprudent costs incurred after September 30, 2011. The General Assembly's determination as to the imprudence of nuclear construction costs after September 30, 2011 is reasonable and supported by the substantial evidence of record.

Yet, after September 30, 2011, the evidence of Westinghouse's inability to create a credible, reliable construction schedule continued to mount. Mr. Wenick continued to represent SCE&G through 2015 with respect to cost overruns and construction delays (Tr. p. 2728, l. 25 – p. 2729, l. 9). While Mr. Wenick was representing SCE&G, Westinghouse lost control of the construction schedule and was unable to provide SCE&G with an integrated construction schedule for the period March 2014 through the third or fourth quarter of 2014. (Hearing Ex. 70). During the period of January 2016 through November 2016, Westinghouse and SCE&G had no milestone payment schedule and the parties' solution was for SCE&G and Santee Cooper to pay Westinghouse \$100 million per month during the period until the parties could agree on a milestone payment schedule (Tr. p. 4041, l. 21 – p. 4043, l. 19). During the eleven month period, SCE&G and Santee Cooper paid Westinghouse over

\$1 billion and Westinghouse was under no obligation to justify how the money was spent (Tr. p. 4043, l. 25 – p. 4044, l. 8).

Only after SCE&G was no longer in compliance with its base load review order did SCE&G file its petition to abandon construction pursuant to S.C. Code Section 58-33-280(K). Both Kevin Marsh and Jimmy Addison recognized the requirement under the BLRA to timely file for an amendment of the base load review order for authority to recovery cost overruns or for approval of construction schedule delays. Nothing prevented SCE&G from filing to amend its schedules or alternatively, to seek abandonment under the provisions of the BLRA in March of 2017 before Westinghouse filed for bankruptcy.<sup>8</sup> SCE&G's delay in filing its petition for abandonment here is fatal.

In summary, Westinghouse's ability to create an integrated schedule was so unreliable, that 1) SCE&G was repeatedly forced to seek and obtain authority to amend its construction schedules to accommodate Westinghouse's incessant delays<sup>9</sup>, 2) SCE&G operated for much of 2014 without an integrated construction schedule at all, and 3) SCE&G operated for eleven months in 2016 without a milestone payment schedule while paying Westinghouse a total of \$1.1 billion in costs without any justification from Westinghouse.

Despite the obvious warning signs that Westinghouse was incapable of developing a credible, reliable construction schedule, SCE&G delayed making its own

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<sup>8</sup> Dominion and SCANA have filed for alternative relief under the BLRA in this docket.

<sup>9</sup> Order No. 2010—12, Order No. 2012-884, Order No. 2015-661 and Order No. 2016-794.



evaluation of Westinghouse's construction budget and schedule for nine years after first learning that the Westinghouse schedule submitted in the EPC contract in 2008 was unreliable.

SCE&G has stressed throughout these proceedings that Westinghouse was the only expert available with the expertise to design a credible, reliable construction schedule and that Westinghouse was to be relied upon over the studied opinions of SCE&G's nuclear finance team and Bechtel, whose opinions ultimately proved to be correct.<sup>10</sup> SCE&G relied upon Westinghouse to recreate a construction schedule over and over again hoping that Westinghouse would learn to create a credible and reliable schedule. SCE&G asks the Commission, the parties and its ratepayers to suspend disbelief. It was utterly reckless for SCE&G to spend \$3.7 billion of its ratepayers money to continue to build these plants after September 2011. The General Assembly acted rationally in establishing September 2011 as the date by which SCE&G should have determined that Westinghouse was incapable of building the units for the anticipated costs and on the anticipated schedule. Accordingly, if the Commission were to find it in the public interest to authorize SCE&G to recover any abandonment costs at all, the Commission should authorize recovery of abandonment costs as of September 30, 2011 consistent with Act 258.

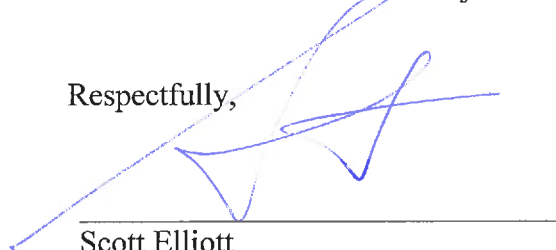
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<sup>10</sup> The Bechtel report dated November 12, 2015 informed SCE&G that the commercial operation dates for units 2 and 3 exceeded Westinghouse's scheduled completion dates by 18 to 26 months and 24 to 36 months respectively. These delays exceeded the completion dates authorized by Order No. 2015-661 dated September 10, 2015.

### Conclusion

Although the warning signs were evident from the outset, SCE&G failed to recognize that Westinghouse was incapable of creating a credible, reliable construction schedule until the utility had spent \$4.9 billion on a failed nine year construction project. SCE&G was forced to go to Westinghouse over and over again for revised schedules hoping that Westinghouse would eventually get it right. Doing the same thing over and over again hoping for a different result may not fit the technical definition of insanity, but it is imprudence. By the time SCE&G recognized that it was not prudent to build the nuclear plants, it was \$2.2 billion over budget and years behind schedule. More important, by the time SCE&G filed for authority to abandon construction of the plants, it was in violation of its base load review order. Consequently, SCE&G is precluded from recovery of revenue from revised rates as of July 31, 2017 and is further precluded from recovery of abandonment costs. Rates should be adjusted accordingly.

Respectfully,



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